IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2006

CORAM :

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

Second Appeal No. 1001 of 1993

1. M. Subramanian (deceased)
2. K.A. Vasugi
3. S. Rajakumar
4. Mrs. Vennila
(2nd Appellant recorded as LR of the deceased I Appellant and Appellants 3 to 4 were brought on record as legal heirs of the deceased 1st appellant vide Order dated 29.10.2004 made in CMP No. 16865 of 2004) .. Appellants (Plaintiffs)

Versus

1. Ramaswamy
2. Rajalakshmi Ammal .. Respondents (Defendants)

Second appeal under Section 100 CPC against the decree and judgment dated 30.01.1992 made in A.S. No. 193 of 1991 on the file of Appellate Authority (Principal Subordinate Judge), Coimbatore reversing the decree and judgment dated 24.12.1990 made in O.S. No. 1749 of 1985 on the file of II Additional District Munsif Court, Coimbatore.

For Appellants : Mr. S. Vijayaraghavan
For Respondents : Mr. R. Saseetharan

JUDGMENT

The Plaintiff is the appellant in this second appeal, who has filed the suit in O.S. No. 1749 of 1985 on the file of District Munsif Court, Coimbatore for declaration and injunction, which was decreed as prayed for. Aggrieved by the same, the defendants/respondents herein have preferred A.S. No. 193 of 1991 before the Principal Subordinate Judge, Coimbatore, which was allowed, setting aside the decree and judgment of the trial court, hence, the present second appeal.

2. Heard both sides. The subject matter of the dispute is in respect of vacant land comprised in Ka.Sa. No. 369 and 370 to a total extent of 5 1/2 cents in Ramanathapuram Village, Coimbatore District. The appellants claim their title to the said land under Ex.A1, sale deed dated 30.09.1976 and the respondents herein claim their title under Ex.B1, sale deed dated 07.09.1978. Both the sale deeds were executed by one Arumugam in favour of the appellants as well as the respondents.

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3. The trial court decreed the suit on the ground that Ex.A1, sale deed dated 30.09.1976 in favour of the appellants is earlier in point of time, hence, the said Arumugam has no right to execute Ex.B1, sale deed dated 07.09.1978 in favour of the respondents.

4. The first appellate Court pointed out that in Ex.A1, the boundaries mentioned are East by; Road, West, South and North by property of the Vendor. The lower appellate Court set aside the decree and judgment of the trial court on the ground that the appellant herein has constructed the house in the subject matter of the land, which is located on the Eastern side of the road.

5. This second appeal is admitted on the following substantial questions of Law:-

> i) Whether the lower appellate Court was right in overlooking the contents of a registered document namely Ex.A1 and relying upon oral evidence to nullify its effect?
> ii) Whether the lower appellate Court was right in ignoring the provisions of Section 90 of Indian Evidence Act and relying upon the oral evidence at variance with the contents of registered document Ex.A1 the truthfulness of which had not been challenged and
> iii) Whether the lower appellate Court was right in not giving effect the principle of law that an earlier disposition as on Ex.A1 will overrule any subsequent disposition of the same property to another person as in Ex.B1?

6. The learned counsel appearing for the appellants submitted that though the trial court has given valid reasons for granting the relief sought for, the first appellate Court has not adverted to the findings given by the trial court. The lower appellate Court, while reversing the decree and judgment of the trial court should have given reasons as to how the trial court is wrong in giving such a finding and in the absence of the same, the decree and judgment of the first appellate Court is liable to be set aside and prayed for allowing the second appeal.

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7. On the above contention of the learned counsel for the appellants, I have also heard the learned counsel for the respondents and perused the records.

8. It is evident from the decree and judgment passed by the first appellate Court that the suit property was not identified by it and the learned counsel for both sides also admits the same. While reversing the decree and judgment of the trial court, the first appellate Court must come into close quarters with the reasons assigned by the trial court and then assign its own reasons for arriving at the finding, which is not done in this case. The first appellate Court has the additional obligation cast on them by the scheme of the present Section 100 substituted in the Civil Procedure Code. The first appellate Court continues, as before, to be a final court of facts, pure findings of fact remain immune from

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challenge before the High Court in second appeal. Now, the first appellate Court is also a final Court of Law in the sense that its decision on a question of law even if erroneous may not be vulnerable before the High Court in second appeal because the jurisdiction of the High Court has now ceased to be available to correct the errors of law or the erroneous findings of the first appellate Court even on questions of law unless such questions of law be a substantial one.

9. The Honourable Supreme Court in the decision reported in (Santosh Hazari vs. Purushottam Tiwari (dead) by Lrs) 2001 (1) Supreme 642 held in Para No. 15 thus:-

> "15. ....The rule is - and it is nothing more than a rule of practice - that when there is conflict of oral evidence of theparties on any matter in issue and the decision hinges upon the credibility of witnesses, then unless there is some special feature about the evidence of a particular witness which has escaped the trial Judge's notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lies, the appellate Court should not interfere with the finding of the trial Judge on a question of fact (See Sarju Pershad Ramdeo Sahu v. Jwaleshwari Pratap Narain Singh & Others). Secondly, while reversing a finding of fact the appellate Court must come into close quarters with the reasoning assigned by the trial Court and then assign its own reasons for arriving at a different finding. This would satisfy the Court hearing a further appeal that the first appellate Court had discharged the duty expected of it. We need only remind the first appellate Courts of the additional obligation cast on them by the scheme of the present Section 100 substituted in the Code. The first appellate Court continues, as before, to be a final Court of facts; pure findings of fact remain immune from challenge before the High Court in second appeal. Now, the first appellate Court is also a final Court of law in the sense that its decision on a question of law even if erroneous may not be vulnerable before the High Court in second appeal because the jurisdiction of the High Court has now ceased to be available to correct the errors of law or the erroneous findings of the first appellate Court even on questions of law unless such questions of law be a substantial one."

10. In view of the fact that the first appellate Court has not given any reasoning for arriving at the conclusion and the fact that the suit property has not been identified, the decree and judgment of the first appellate Court passed in A.S. No. 193 of 1991 on the file of Principal Subordinate Judge, Coimbatore dated 30.01.1992 is set aside and the matter is remanded back to the first appellate Court for fresh disposal on merits. The parties are at liberty to let in additional evidence,

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however, they shall do so within a period of two months from the date of receipt of a copy of this judgment by the first appellate Court. The first appellate Court is directed to dispose of the matter within a period of six months from the date of receipt of a copy of this judgment.

11. The second appeal is allowed accordingly. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Appellate Authority
   (Principal Subordinate Judge)
   Coimbatore

2. The II Additional District Munsif
   Coimbatore.

3. The Section Officer
   Vernacular Records Section
   High Court, Madras - 600 104

1 cc To Mr.R.Saseetharan, Advocate, SR.57165.
2 cc To Mr.S.Vijayaraghavan, Advocate, SR.56762.

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